REMARKS

In the Office Action[1], the Examiner:

1. objected to the Abstract;
2. rejected claims 1-5, 7, 10-14, 17-22, 24, 27-31, 34-37, 39, 42-46, and 49-52 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,124,197 to Ocepek et al. ("*Ocepek*") in view of U.S. Patent No. 7,295,524 to Gray et al. ("*Gray*");
3. rejected claims 6, 23, and 38 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek*, in view of *Gray*, and further in view of U.S. Patent No. 6,009,423 to Moran ("*Moran*");
4. rejected claims 8, 25, and 40 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek*, in view of *Gray*, and further in view of U.S. Patent No. 7,174,373 to Lausier ("*Lausier*");
5. rejected claims 9, 26, and 41 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek*, in view of *Gray*, in view of *Lausier*, and further in view of U.S. Patent Application Publication No. 2003/0101353 to Tarquini et al. ("*Tarquini*"); and
6. rejected claims 15, 16, 32, 33, 47, and 48 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek*, in view of *Gray*, and further in view of U.S. Patent No. 6,580,712 to Jennings et al. ("*Jennings*").

[1] The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

Applicant has amended claims 2, 18, 19, 34, 49, 50, and 52 and canceled claims 1, 12-15, 17, 29-32, 44-47, and 51. Claims 2-11, 16, 18-28, 33-43, 48-50, and 52 remain pending and under current examination.

I. Regarding the objection to the Abstract

Regarding the objection to the Abstract, the Examiner states, "[t]he form and legal phraseology often used in patent claims, such as 'means' and 'said,' should be avoided" (Office Action at page 2). Applicants have amended the Abstract to meet the requirements of MPEP § 608.01(b). Therefore, Applicants respectfully request that the Examiner withdraw the objection to the Abstract.

II. Regarding the rejection of claims 1-5, 7, 10-14, 17-22, 24, 27-31, 34-37, 39, 42-46, and 49-52 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of *Gray*

Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 1-5, 7, 10-14, 17-22, 24, 27-31, 34-37, 39, 42-46, and 49-52 under 35 U.S.C. § 103(a) because a *prima facie* case of obviousness has not been established with respect to these claims. Claims 1, 12-14, 17, 29-31, 44-46, and 51 have been canceled, rendering the rejection to those claims moot.

The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. *See* M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007). Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. *See* id. "A conclusion of obviousness requires that the reference(s) relied upon be enabling in that it put the public in possession of the claimed invention." M.P.E.P. § 2145. Furthermore, "[t]he mere fact that references can be combined or modified does not render the

resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art" at the time the invention was made. M.P.E.P. § 2143.01(III), internal citation omitted. Moreover, "[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." M.P.E.P. § 2141.02(I), internal citations omitted (emphasis in original).

"[T]he framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). . . . The factual inquiries . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the prior art." M.P.E.P. § 2141(II). "Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art." M.P.E.P. § 2141(III).

In this application, a *prima facie* case of obviousness has not been established because the Examiner has not clearly articulated a reason why one of ordinary skill would find the claimed combination obvious in view of the cited references.

For example, claim 2 recites a method comprising, *interalia*:

> storing one or more organizationally unique identifiers that comprise the first three octets of one or more registered addresses;
> receiving from the network a packet with an address;
> searching the identifiers, wherein a more frequently encountered identifier is searched before a less frequently encountered identifier;
> comparing the first three octets of the received address with the identifiers;
> determining if the received address includes one of the stored identifiers;
> . . .

> comparing the determined operating system with one or more stored operating systems, such that at least one of the stored operating systems corresponds to the wireless access device; and
> indicating that the received packet corresponds to the wireless access device based on the first three octets of the received address and when the determined operating system matches at least one of the stored operating systems.

(emphasis added). *Ocepek* discloses security device 10 that "passively monitors the data link layer for new client devices 24" (col. 5, lines 14-15). "The source MAC address is dependent upon the operating system and hardware of protected servers 16" (col. 7, lines 43-44).

Any address that may exist in Fig. 6 of *Ocepek* corresponds to the source MAC address that depends on servers 16. Accordingly, any packet indication that may exist in *Ocepek* indicates that the packet is dependent on servers 16, not client devices 24, alleged by the Examiner to correspond to the claimed "wireless access device." Therefore, neither server 16 nor any other component of *Ocepek* corresponds to the claimed "wireless access device," as asserted by the Examiner.

Ref. 20 in *Ocepek* is a wireless access point that provides client devices 24 access to network 12. The use of wireless access point 20 to provide client devices 24 access to network 10 does not support a contention that server 16 corresponds to the claimed "wireless access device," at least because one of ordinary skill would recognize that a server is not a "wireless access device." Therefore, *Ocepek* does not teach or suggest the claimed "wireless access device," as recited in claim 2.

In addition, *Ocepek* does not teach or suggest the use of "organizationally unique identifiers that consist of the first three octets of one or more registered addresses." Accordingly, *Ocepek* does not teach or suggest the claimed steps of "storing one or

more organizationally unique identifiers that consist of the first three octets of one or more registered addresses," "searching the identifiers," "comparing the first three octets of the received address with the identifiers," and "determining if the received address includes one of the stored identifiers," as recited in claim 2.

The Examiner correctly states that *Ocepek* "does teach determining a wireless device based on the first three octets of the address" (Office Action at page 3). Therefore, *Ocepek* cannot teach or suggest "indicating that the received packet corresponds to the wireless access device based on the first three octets of the received address," as further recited in claim 2.

Gray does not cure the deficiencies of *Ocepek*. *Gray* discloses "WLAN air space mapping" (col. 3, lines 8-9). While *Gray* mentions octets, *Gray* does not teach or suggest "storing one or more organizationally unique identifiers that consist of the first three octets of one or more registered addresses" in combination with "searching the identifiers, wherein a more frequently encountered identifier is searched before a less frequently encountered identifier," as recited in claim 2.

Accordingly, *Ocepek* and *Gray* do not teach or suggest the elements of claim 2. Moreover, there is no teaching or suggestion that would lead one of ordinary skill in the art to modify the apparatus of *Ocepek* and *Gray* to achieve the combination of claim 2. Thus, as outlined above, the Office Action has neither properly determined the scope and content of the cited references nor properly ascertained the differences between the cited references and the claimed invention. Therefore, no reason has been clearly articulated as to why the claim would have been obvious to one of ordinary skill in view

of the cited references and a *prima facie* case of obviousness has not been established with respect to claim 2.

Thus, claim 2 is allowable for at least these reasons, and claims 3-5, 7, 10, and 11 are also allowable at least due to their dependence from claim 2.

Independent claims 18, 19, 34, 49, 50, 52, while of different scope, recite elements similar to those of claim 2 and are thus allowable over *Ocepek* and *Gray* for at least the same reasons discussed above in regard to claim 2. Moreover, claims 20-22, 24, 27, 28, 35-37, 39, 42, and 43 are also allowable at least due to their dependence from one of claims 19 and 34.

III. Regarding the rejection of claims 6, 23, and 38 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek*, *Gray*, and *Moran*

Regarding the rejection of claims 6, 23, and 38, which depend from claims 2, 19, and 34, the Examiner relies on *Moran* for allegedly disclosing "comparing based on determination of whether a portion of the address is similar to a portion of at least one of the registered addresses" (Office Action at page 15). Even assuming this allegation is correct, which Applicant does not concede, *Moran* fails to cure the deficiencies of *Ocepek* and *Gray* discussed above.

Moran discloses providing "a search structure which can be efficiently searched and which when implemented in the context of a bridge . . . enables the efficient location of data associated with a given 6-byte address" (col. 2, lines 3-6). However, *Moran* does not teach or suggest "storing one or more organizationally unique identifiers that consist of the first three octets of one or more registered addresses" in combination with "searching the identifiers, wherein a more frequently encountered identifier is searched

before a less frequently encountered identifier," as recited in claim 2, similarly recited in claims 19 and 34, and required by dependent claims 6, 23, and 38.

As explained above, the elements required by claims 6, 23, and 38 are neither taught nor suggested by the cited references, whether taken individually or in combination. Furthermore, as outlined above, the Examiner has neither properly determined the scope and content of the cited references nor properly ascertained the differences between the cited references and the claimed invention. Therefore, no reason has been clearly articulated as to why claims 6, 23, and 38 would have been obvious to one of ordinary skill in view of the references and a *prima facie* case of obviousness has not been established.

IV. Regarding the rejection of claims 8, 25, and 40 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek*, *Gray*, and *Lausier*

Regarding the rejection of claims 8, 25, and 40, which depend from claims 2, 19, and 34, the Examiner relies on *Lausier* for allegedly disclosing "determining the operating system at the IP address associated with the address" (Office Action at page 15). Even assuming this allegation is true, which Applicant does not concede, *Lausier* does not cure the deficiencies of *Ocepek* and *Gray* noted above.

Lausier discloses a "system of internet broadcasting in which multimedia content is delivered to internet users bypassing most internet backbone" (col. 3, lines 53-55). However, *Lausier* does not teach or suggest "storing one or more organizationally unique identifiers that consist of the first three octets of one or more registered addresses" in combination with "searching the identifiers, wherein a more frequently encountered identifier is searched before a less frequently encountered identifier," as

recited in claim 2, similarly recited in claims 19 and 34, and required by dependent claims 8, 25, and 40.

As explained above, the elements required by claims 8, 25, and 40 are neither taught nor suggested by the cited references, whether taken individually or in combination. Furthermore, as outlined above, the Examiner has neither properly determined the scope and content of the cited references nor properly ascertained the differences between the cited references and the claimed invention. Therefore, no reason has been clearly articulated as to why claims 8, 25, and 40 would have been obvious to one of ordinary skill in view of the cited references and a *prima facie* case of obviousness has not been established.

V. Regarding the rejection of claims 9, 26, and 41 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek*, *Gray*, *Lausier*, and *Tarquini*

Regarding the rejection of claims 9, 26, and 41, which depend from claims 2, 19, and 34, the Examiner relies on *Tarquini* for allegedly disclosing "determining the operating system using an nmap" (Office Action at page 16). Even assuming this allegation is true, which Applicant does not concede, *Tarquini* does not cure the deficiencies of *Ocepek*, *Gray*, and *Lausier* noted above.

Tarquini discloses "a method of detecting an intrusion at a node of a network" (paragraph 0014). However, *Tarquini* does not teach or suggest "storing one or more organizationally unique identifiers that consist of the first three octets of one or more registered addresses" in combination with "searching the identifiers, wherein a more frequently encountered identifier is searched before a less frequently encountered

identifier," as recited in claim 2, similarly recited in claims 19 and 34, and required by dependent claims 9, 26, and 41.

As explained above, the elements required by claims 9, 26, and 41 are neither taught nor suggested by the cited references, whether taken individually or in combination. Furthermore, as outlined above, the Examiner has neither properly determined the scope and content of the cited references nor properly ascertained the differences between the cited references and the claimed invention. Therefore, no reason has been clearly articulated as to why claims 9, 26, and 41 would have been obvious to one of ordinary skill in view of the cited references and a *prima facie* case of obviousness has not been established.

VI. Regarding the rejection of claims 15, 16, 32, 33, 47, and 48 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek*, *Gray*, and *Jennings*

Claims 15, 32, and 47 have been canceled, rendering the rejection to those claims moot. Regarding the rejection of claims 16, 33, and 48, which depend from claims 2, 19, and 34, the Examiner relies on *Jennings* for allegedly disclosing "storing the plurality of the organizationally unique identifiers, such that a more frequently encountered organizationally unique identifier is searched before a less frequently encountered organizationally unique identifier" (Office Action at page 16). This is not correct.

Jennings discloses "the use of a specific or dedicated engine to execute the algorithm" (col. 2, lines 50-51). In *Jennings*, "[t]he LRU scheme tunes a look-up database over time so as the most frequently used MAC addresses move to the start of the linked lists" (col. 5, lines 50-52). *Jennings* does not teach or suggest the claimed

"organizationally unique identifiers." Accordingly, *Jennings* does not teach or suggest "storing one or more organizationally unique identifiers that consist of the first three octets of one or more registered addresses." In addition, moving MAC addresses to the start of linked lists does not teach or suggest "searching the identifiers, wherein a more frequently encountered identifier is searched before a less frequently encountered identifier."

Therefore, *Jennings* does not teach or suggest "storing one or more organizationally unique identifiers that consist of the first three octets of one or more registered addresses" in combination with "searching the identifiers, wherein a more frequently encountered identifier is searched before a less frequently encountered identifier," as recited in claim 2, similarly recited in claims 19 and 34, and required by dependent claims 16, 33, and 48.

As explained above, the elements required by claims 16, 33, and 48 are neither taught nor suggested by the cited references, whether taken individually or in combination. Furthermore, as outlined above, the Examiner has neither properly determined the scope and content of the cited references nor properly ascertained the differences between the cited references and the claimed invention. Therefore, no reason has been clearly articulated as to why claims 16, 33, and 48 would have been obvious to one of ordinary skill in view of the cited references and a *prima facie* case of obviousness has not been established.

VII. Conclusion

In view of the foregoing, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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